9IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 193 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL SHIVABHAI CHHAGANBHAI - Appellant(s)
Versus
PATEL HARIBHAI GHELABHAI - Defendant(s)

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Appearance :
MR ARUN H MEHTA for Appellant
None for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/01/2007

ORAL JUDGMENT

1. Shri Arun H. Mehta, learned counsel for the appellant, Shri Saurav Patel, learned counsel for the respondent. Parties are heard. The

appeal has been admitted on the following substantial questions of law:-

> “[1] Whether the law requires that it must be pleaded in the plaint that by the proposed construction by the defendant light and air received by the plaintiff from the apertures would be materially diminished and would cause physical discomfort to the plaintiff?
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> [2] Whether the lower appellate court has misread and misconstrued the two decisions reported in [i] Smt. Laxmibai V. Smt. Kashibai, AIR 1983 NOC Page 57 and [ii] AIR 1975 Gujarat, Page 105?
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> [3] Whether the lower appellate court erred in holding that in the State of Gujarat, a party cannot claim a right of privacy?”

2. The short facts necessary for disposal of the present appeal are that the plaintiff is owning a house in Patidar Maholla of village Dethli, bearing Gram Panchayat No. 2/57. The house was

open on the north. The said house on north-south was 63 feet and east-west 12 feet. On the north of the said house, there is a door and subsequent to that, there is open area and there is door of small passage, thereafter, there lies main road. On the south, there is hind portion of the plaintiff's house. Rain water falls in the open land behind the said portion. Adjoining the east wall of the plaintiff's house, house of Harjivan is situated. On the west, there is adjoining wall of Patel Nathabhai Ishwardas. There are two slopes of the roof on the house as well as on the small door. According to the plaintiff, the defendant who was desirous of making construction was making construction in a manner which was to close windows opening towards the side of the defendant. He submits that if the defendant constructs his house, then, his right of light and air would be adversely affected and his right of discharging rain water would also be adversely affected.

3. The defendant appeared before the court and

submitted that the plaintiff had no easementary right and the suit could not be decreed, however, the learned trial court held that the plaintiff had easementary right of light and air from the two apertures which were on the back side of his house. The trial court also held that the plaintiff had a right to discharge rain water upon the defendant's property. The trial court also declared that the plaintiff has a right to privacy and it restrained the defendant from constructing anything within 5 feet of two apertures and also restrained the defendant from placing any aperture opposite to the plaintiff's apertures. Being aggrieved by the said judgment and decree, the defendant took up the matter in appeal. The appellate court, after hearing the parties held that the plaintiff has a right to discharge the rain water, but he had no easementary right of light and air, because, such was not the question raised nor any issue to that effect was framed. The court also held that the defendant could not be restrained from raising his

construction within five feet. It accordingly maintained the decree in relation to the discharge of the rain water, but set aside other part of the decree.

4. Being aggrieved by the said judgment and decree, the appellant-plaintiff is before this Court.

5. After taking me through the records and the pleadings and the judgment of both the courts, Shri Mehta, learned counsel for the appellant submits that the learned first appellate court became too technical in refusing reliefs which were granted by the trial court only on the ground that the plaintiff did not plead in the plaint that by the proposed construction to be raised by the defendant, light and air received by the plaintiff from the apertures would be materially diminished and would cause physical discomfort to the plaintiff. His submission is that if the parties knew about each other's case and led evidence to that effect, then, non-framing of issues would not make any difference. He also submits that the learned first appellate

court was unjustified in holding that in State of Gujarat, a party cannot claim right of privacy.

6. Learned counsel for the respondent on the other hand, submitted that unless a particular fact is pleaded and other side is given an opportunity to rebut the same in the pleadings, trite law is that any amount of evidence would not be looked into. He submits that the first appellate court was absolutely justified in holding that in absence of appropriate and proper pleadings, reliefs could not be granted to the plaintiff.

7. After hearing the parties, I am of the opinion that the learned first appellate court was not unjustified in refusing reliefs which were granted by the trial court in relation to the construction and right of easement of light and air. It is trite law that the plaint must contain all material facts and should also provide causes which persuade a party to come to the court. The plaint, in fact, moves wheels in motion and requires the defendant to file his written statement against the pleadings of the

party. It is also trite to say that in absence of the pleadings, any amount of evidence would not be looked into by the court, because, the Court would be entitled to confine itself to the pleadings raised by the parties. In absence of proper pleadings relating to right of the plaintiff to receive light and air and physical discomfort, the trial court, certainly could not decide anything in favour of the plaintiff.

8. In the opinion of this Court, the learned first appellate court was not unjustified in refusing the relief relating to easement and declaration. The appeal deserves to and is accordingly dismissed. No costs. Interim relief, if any, is vacated.

9. Let a decree be framed accordingly.

[R.S. GARG, J.]

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